

LEE CLEMENTS,
Plaintiff,

v.
CAPITAL ONE BANK (USA), N.A.,

1680 Capital One Drive
Bank of America Center, 16th Floor
McLean, VA 22102-1111

Defendant.

) Civil Action No.
)
)
) PLAINTIFF’S COMPLAINT FOR
) DAMAGES
) (Telephone Consumer Protection Act)
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LEE CLEMENTS (“Plaintiff”), by and through his attorneys, alleges the following against CAPITAL ONE BANK (USA), N.A. (“Defendant”):

JURISDICTION AND VENUE

3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012), holding that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA.

1 § 227(a)(1) to place its telephone calls to Plaintiff seeking to collect a consumer debt allegedly
2 owed by Plaintiff, LEE CLEMENTS.

3 13. Defendant's calls constituted calls that were not for emergency purposes as defined
4 by 47 U.S.C. § 227(b)(1)(A).

5 14. Defendant's calls were placed to a telephone number assigned to a cellular
6 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
7 227(b)(1).

8 15. Defendant never received Plaintiff's "prior express consent" to receive calls using
9 an automatic telephone dialing system or an artificial or prerecorded voice on his cellular
10 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

11 16. On December 20, 2017, Plaintiff called into Defendant's company at phone number
12 (800) 955-6600. Plaintiff spoke with Defendant's male representative and requested that
13 Defendant cease calling Plaintiff's cellular phone.

14 17. During the conversation on December 20, 2017, Plaintiff gave Defendant his social
15 security number and date of birth to assist Defendant in accessing his account before asking
16 Defendant to stop calling his cell phone (252) 269-67XX.

17 18. Plaintiff revoked any consent, explicit, implied, or otherwise, to call his cellular
18 telephone and/or to receive Defendant's calls using an automatic telephone dialing system in his
19 conversation with Defendant's representative on December 20, 2017.

20 19. Despite Plaintiff's request, Defendant continued to place telephone calls to
21 Plaintiff's cellular telephone after December 20, 2017.

22 20. Defendant placed at least ninety-two (92) automated calls to Plaintiff's cellular
23 telephone from December 2017 to April 2018.
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FIRST CAUSE OF ACTION

NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER

PROTECTION ACT 47 U.S.C. § 227

21. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-20.

22. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

23. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B).

24. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER

PROTECTION ACT

47 U.S.C. § 227 et. seq.

25. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-20.

26. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

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1 27. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et
2 seq., Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every violation,
3 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

4 28. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the
5 future.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, LEE CLEMENTS, respectfully requests judgment be entered
8 against Defendant, CAPITAL ONE BANK (USA), N.A. for the following:

9 **FIRST CAUSE OF ACTION**

10 For statutory damages of \$500.00 multiplied by the number of TCPA violations alleged
11 herein (92), \$46,000.00;

12 Actual damages and compensatory damages according to proof at time of trial;

13 **SECOND CAUSE OF ACTION**

14 For statutory damages \$1,500.00 multiplied by the number of TCPA violations alleged
15 herein (92), \$138,000.00;

16 Actual damages and compensatory damages according to proof at time of trial;

17 **ON ALL CAUSES OF ACTION**

18 Actual damages and compensatory damages according to proof at time of trial;

19 Costs and reasonable attorneys' fees;

20 Any other relief that this Honorable Court deems appropriate.

21 **JURY TRIAL DEMAND**

22 Plaintiff demands a jury trial on all issues so triable.
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1 Dated: December 4, 2018

RESPECTFULLY SUBMITTED,

3 /s/ Alexis A. Kokkinos,

4 Alexis A. Kokkinos, Virginia Bar No. 87262

Attorney for Plaintiff LEE CLEMENTS

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14 *Pro Hac Vice* Application to follow